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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Implementation of the
Telecommunications Act of 1996:
Telecommunications Carriers'
Use of Customer Proprietary
Network Information and
Other Customer Information

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) CC Docket No. 96-115
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To: The Commission

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REPLY COMMENTS OF
ARCH COMMUNICATIONS GROUP, INC.

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June 26, 1996

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**REPLY COMMENTS OF
ARCH COMMUNICATIONS GROUP, INC.**

Arch Communications Group, Inc. ("Arch"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules^{1/} hereby files its Reply Comments in the captioned proceeding. The following is respectfully shown:

I. INTRODUCTION AND SUMMARY

1. In its Comments on the Notice of Proposed Rule Making,^{2/} Arch supported the Commission's classification of

^{1/} 47 C.F.R. §§1.415, 1.419.

^{2/} Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Computer Proprietary Network Information and Other Customer Information, Notice of Proposed Rule Making, ("NPRM"), FCC 96-221, CC Docket No. 95-115, released May 17, 1996.

telecommunications services into three categories: local, interexchange, and CMRS. Arch suggested that the CMRS category be further refined to reflect the differences in broadband and narrowband CMRS services and that narrowband CMRS services be classified as a single telecommunications service for purposes of Section 222.^{3/}

2. Arch also suggested that the type of notice which must be provided to subscribers regarding their right to restrict the use of CPNI, as well as the form of consent which must be secured prior to such use, should depend upon the level of competition in the requesting carrier's marketplace. Only when a LEC can demonstrate that the competitive checklist provided in the Telecommunications Act of 1996 has been met within its local market would it be subject to the relaxed regulations applicable to competitive CMRS providers.^{4/} Arch's suggestions were consistent with the balance of privacy and competition considerations which the Commission sought to achieve in its CPNI rules, as did Congress in adopting Section 222 of the Communications Act.

^{3/} Comments of Arch Communications Group, Inc. ("Arch Comments") filed June 11, 1996, pp. 5-7.

^{4/} Arch Comments, pp. 8-11.

3. Predictably, larger companies providing multiple telecommunications services have offered suggestions for CPNI rules which would tip the scales back in favor of companies which enjoy an unfair competitive advantage due to their significant market presence in the local marketplace. Arch's Reply Comments are limited to three brief points in reply to these suggestions.

II. ARGUMENT

A. CMRS Is A Separate Class of Telecommunications Service

4. Some carriers argue that CMRS is not a separate telecommunications service, but rather that it falls within the local service "bucket,"^{5/} or may "float" between local and interexchange services.^{6/} Consequently, local exchange carriers would be permitted to utilize CPNI gained in connection with the provision of once-monopoly local exchange services in order to market CMRS services and establish a significant, market presence in the CMRS market

^{5/} See, e.g., Comments of GTE Service Corporation, pp. 10-16.

^{6/} See, e.g., Comments of US WEST, Inc., pp. 2, 5, 12; and MCI Telecommunications Corporation, pp. 4-5.

segment. The economic incentive underlying the LECs' argument is clear - but the argument is flawed. CMRS services are not substitutable for traditional local service: they are subject to different cost and pricing structures, not ubiquitous, and not targeted at the same consumers. Moreover, there are several examples in which CMRS providers are accorded different regulatory treatment than that accorded to LECs, e.g., tariff obligations, rate oversight, accounting methodology, extension and termination of lines, and, in some instances, transactions with affiliated companies. Thus, the argument that LECs should be permitted to use CPNI to market CMRS services as the same telecommunications service does not withstand scrutiny.

B. Existing Customer-Carrier Relationships Do Not Reduce a Subscriber's Expectation of Privacy

5. Several carriers suggest that a customer's expectation of privacy in his or her CPNI is reduced where the customer has established a customer-carrier relationship for service, since a customer is less likely to be offended by recurring contact from a company with which it has an

agreement for service.^{7/} Based upon that premise, some carriers argue that carriers should be able to use CPNI to market all of the services they provide^{8/} and that all of their affiliated companies also should be able to use CPNI gained in the course of a particular relationship.

6. Arch respectfully suggests that this argument is flawed in at least two ways. First, it ignores that many LECs gained access to CPNI primarily as a result of their monopoly positions in the local exchange marketplace. To permit the LECs to use freely information gained by its market dominance to achieve a competitive advantage in another market segment would be anticompetitive. Second, the argument assumes that customers lose interest in their privacy simply by virtue of the contractual relationship for service. This theory has no basis in fact. Third, the argument is based upon another flawed theory -- that all of the telecommunications services a company provides are fully interchangeable or substitutable (i.e., that a customer will

^{7/} See, e.g., Comments of Ameritech, pp. 3, 12; Bell Atlantic, pp. 7-9; NYNEX Telephone Companies, p. 16; and US WEST, Inc., pp. 4-6, 16-17.

^{8/} See, e.g., Comments of SBC Communications, Inc., pp. 5-10.

want to hear about all of a carrier's offerings). To the contrary, CMRS services, particularly narrowband CMRS, are not substitutable for local exchange services. The services are not similarly priced, are not targeted at the same customers, and do not provide consumers with the same service.

C. CPNI Rules Should Reflect the Level of Competition in the Carrier's Marketplace

7. Arch suggested that local and interexchange service providers providing more than one type of communications service be required to provide written notice to subscribers explaining their CPNI rights prior to requesting consent for the use of CPNI, and to secure consent to the use of CPNI in writing until such time as the competitive checklists provided in the Telecommunications Act of 1996 have been satisfied.^{9/} On the other hand, CMRS providers should be permitted to choose whether to notify consumers of their rights and secure consent to the use of CPNI either in writing or orally in light of the competitive environment in which they provide service.^{10/} Arch's

^{9/} Arch Comments, p. 8.

^{10/} Arch Comments, p. 9.

proposal strikes a fair balance between carriers with varying levels of market power.

8. Some carriers argue that the text of Section 222 does not distinguish between telecommunications carriers and therefore that the CPNI obligations imposed upon all carriers must be identical.^{11/} This argument is inconsistent with the role of statutory interpretation and implementation assigned to the FCC, Commission policy and the public interest.

9. The FCC is the administrative agency charged with interpreting and implementing the 1996 Act, including Section 222. The FCC's interpretation must be accorded substantial deference; unless its interpretation of the 1996 Act is arbitrary and capricious, or without substantial support in the record, the FCC's interpretation will stand. Based upon the record, the Commission may adopt rules which reflect the competitive environment in which carriers operate. First, the 1996 Act recognizes in several places that the scope of regulation should depend upon competition

^{11/} See, e.g., Comments of Bell Atlantic, pp. 9-10; NYNEX Telephone Companies, pp. 3-8, 19-20; SBC Communications, Inc., pp. 2-5; and US WEST, Inc., p. 21.

in the marketplace.^{12/} Thus, consideration of the competitive environment in connection with the interpretation of Section 222 would be consistent with other provisions of the 1996 Act. Second, several carriers have echoed the Commission's comments in the NPRM^{13/} released in this proceeding - i.e., that CPNI rules were (and still are) necessary to prevent carriers with a strong-hold in one market segment from using that advantage to gain an unfair advantage in a separate market segment. Consistent with its comments in that regard, Arch has suggested that CPNI requirements should be relaxed once the local or interstate service provider is unable to demonstrate that competition exists within the marketplace.

10. Finally, imposition of similar CPNI requirements on all telecommunications carriers is inconsistent with Commission policy and the public interest. The Omnibus Budget Reconciliation Act of 1993 ("Budget Act") announced the beginning of the attempt to achieve regulatory parity among similar services. The Commission has determined that several CMRS services are substantially

^{12/} E.g., Sections codified at 47 U.S.C. §§251, 271-6, 401-3.

^{13/} NPRM, para. 4.

similar and/or substitutable, and operate within the same competitive marketplace, such that symmetrical regulatory obligations are warranted. Commission rules which remain blind to the obvious distinctions in market power, traditional market dominance, and advantages gained by virtue of monopoly status clearly are contrary to the views espoused in the CMRS proceeding. Moreover, subjecting carriers typically with less wherewithal than LECs with market power to the same costly regulatory burdens works to further the competitive advantage enjoyed by LECs, furthers the gap between potential competitors, and is contrary to the public interest.

Arch Communications Group, Inc.
CC Docket No. 96-115
Reply Comments 6/26/96

III. CONCLUSION

The foregoing premises having been duly considered, Arch respectfully requests that the Commission adopt the recommendations set forth in its Comments and Reply Comments filed in this proceeding.

Respectfully submitted,

**ARCH COMMUNICATIONS GROUP,
INC.**

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CERTIFICATE OF SERVICE

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